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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/425,636	10/22/1999	DOUGLAS QUONG	55197USA	9824

7590

05/10/2002

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EXAMINER

NGUYEN, HELEN

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 05/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/425,636

Applicant(s)

QUONG, DOUGLAS

Examin r

Helen Nguyen

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 12-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The request for Continued Prosecution Application (CPA) of paper no. 13, filed March 06, 2002, is acknowledged.

The amendment of paper no. 10, filed February 12, 2002, is acknowledged.

Claims 19-32 are canceled in paper no. 10.

Claims 1 and 4 are amended in paper no. 8.

Claim 11 is canceled in paper no. 8.

Claim 9 is non-elected.

Claims 1-8, 10, and 12-18 are pending and presented for examination.

The Terminal Disclaimer of paper no. 12, filed October 5, 2001, is approved.

Title objection

The objection to the title of this invention made moot due to a replacement of the title in paper no. 10.

Obviousness Provisional Double Patenting

The rejection of record under Obviousness Double Patenting set forth in previous office action of paper no. 9, filed December 06, 2001, is hereby

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withdrawn in view of the Terminal Disclaimer filed October 5, 2001, paper no. 12.

Claim rejection- 35 USC § 103

In view of the amendment of paper no. 10, filed February 12, 2002, claims 1-8, 10, and 12-18 stand rejected as indicated below.

❖ The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10, and 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akashi et al. (US Patent No. 5,686,385).

Akashi et al. teach a microcapsule for easily handling and improving physical properties. The microcapsule comprises an agricultural active ingredient, including a pheromone (title, abstract, column 3, lines 35-36, column 5, line 47, and column 8, lines 12-17). The active is encapsulated with alginates by spray drying (column 8, lines 55-56, column 3, lines 64-66, column 6, line 45).

Akashi et al. further teach that auxiliary ingredients can be added to the microcapsule. Such auxiliary ingredients include a wetting agent, a surfactant, talc, and a UV absorbent (column 9, lines 55, 62, column 10, lines 1-2, and column 11, line 1).

Akashi et al. further teach delivery via dispersion of the microparticles in water (column 9, line 27).

However, Akashi et al does not teach desiccated microcapsules exposed to humidity and rehydrated and/or dehydrated.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to deliver a dispersion of alginate microcapsules containing pheromones to achieve the beneficial effect of handling and improving physical properties in view of Akashi et al.

As to the claimed exposure to humidity and rehydrating, it is well-known to one having ordinary skill in the art that spraying the composition into the environment, which has natural changes in humidity, would cause the composition to naturally dehydrate and rehydrate as the levels of humidity in the environment change. Further, Applicant has not shown that the means by which the humidity is formed is critical, and therefore the

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natural environmental moisture produced through humid air and rain reads on Applicant's claims.

As to the claimed weight percent, it is within the skill in the art to select optimal parameters such as ratios or weight percents of components in order to achieve a beneficial effect. See In re Boesch, 205 USPQ 215 (CCPA 19880). Therefore, the ratios or weight percents instantly claimed are not considered critical absent evidence showing unexpected and superior results.

Conclusion

Claims 1-8, 10, and 12-18 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is (703) 605-1198. The examiner can normally be reached on M-F (9:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Edward J. Webman can be reached at (703) 308-4432 or her supervisor, Minna Moezie can be reached at (703) 308-4612. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Helen Nguyen
Patent Examiner

May 8, 2002



EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500